IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 67 OF 1991

The Commissioner of Income Tax ... Applicant.

vs.

M/s. Automotive Corporate
Service P. Ltd. ... Respondent.

CORAM: V.S. Daga & A.S. Aguiar JJ.

Date: 14 /7 /2005

Mr. A. N. Kotangale, Sr. Cousel
with Mr. K. C.Sidhwa for applicant

Mr. A. S. Tungare for respondent

P.C.

This is a reference under section 256(1) of the Income Tax act , at the instance of the revenue, arising out of the order of the Tribunal for the Assessment Year 1981-82.

The question referred to reads as follows:

"Whether, on the facts and in the

circumstances of the case, the Tribunal was right in law in holding that the expenditure of Rs.2,22,054 incurred by the assessee on repair and maintenance of a building taken on rent for business purpose is an allowable business expenditure within the meaning of sec.30(a)(i) of the Income Tax Act, 1961?

2. Having heard learned counsel for the parties it is not in dispute that the contract of lease dated 1st October 1971 provided for the repair work to be done by the landlord. The right to maintain the tenanted property was retained by the assessee who was the tenant in the premises. In the circumstances it cannot be said that it was the obligation of the owners to carry out or to undertake the liability to meet the expenditure incurred on repairs and maintenance of the premises. We were taken through the terms of the contract. We find that the contract is silent so far as reference to the undertaking is concerned but the obligation is on the assessee - tenant to maintain the premises in good condition and to meet the expenses of

the maintenance thereof. The finding of fact, as has been recorded by all the authorities below is that the respondent was carrying on business from the very same premises and the repairs were actually carried out in the premises. The CIT (A) as well as the Tribunal has recorded concurrent finding of fact that the expenditure was incurred by the assessee for carrying on the business and that the premises was being used for the purpose of business. Therefore the expenditure incurred was allowed under section 30A(I) of the Act, as it was a in relation to the commercial activities of the appellant- assessee.

3. It will not be out of place to mention that as per law laid down by the Apex Court in the case of **Commissioner of Income Tax vs. Gemini Cashew Sales Corporation,** reported in [1967] 65 ITR 643 (S.C.). Thus it is for the assessee to explain as and how to protect his interest.

4. None of the authorities below have doubted the nature of the repairs and or the quantum of the amount that has been spent thereon. It is also not in dispute that the business was carried on from the very same

premises. Under the circumstances the expenditure incurred on these items were deductible and as such the disallowance of Rs. 1,99,009/- made by the ITO is rightly deleted by the CIT Appeals as well as the Tribunal. In this view of the matter we answer the question in the affirmative i.e. in favour of the assessee and against the respondent. Reference stands disposed of with no order as to costs. Accordingly Notice of motion also stands disposed of with no order as to costs.

(V.S. Daga J)

(A.S.Aguiar J.)